

Rameshwar Vs. Hardas and ors.

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Court : Allahabad

Decided On : Nov-14-1963

Reported in : AIR1964All308

Judge : V.G. Oak and ;Satish Chandra, JJ.

Acts : [Hindu Succession Act, 1956](#) - Sections 4, 14 and 15

Appeal No. : Special Appeal No. 83 of 1958

Appellant : Rameshwar

Respondent : Hardas and ors.

Advocate for Def. : S.S. Varma, Adv.

Advocate for Pet/Ap. : N.P. Asthana, Adv.

Disposition : Appeal allowed

Judgement :

Satish Chandra, J.

1. This special appeal has been filed by the plaintiff and arises out of a suit for a declaration that the sale deed dated 1-8-1927 would be void and inoperative after the death of Smt. Kashi Bai, the executant thereof.

2. Parmanand and Bindraban were two brothers. Bindraban was the owner of the house in dispute. He died and on his death the house in dispute devolved on his widow Smt. Gaura Bai as a limited owner. On 28-1-1926 Smt. Gaura Bai by a deed, gifted the house to her daughter-in-law Smt. Kashi Bai. Parmanand's sons, who are respondents 1 to 3 here, challenged the validity of the gift. Ultimately on 1-8-1927 Smt. Kashi Bai executed a sale deed of the house in dispute for a sum of Rs. 1,650/- in favour of the three sons of Parmanand, viz., respondents 1, 2 and 3.

3. Smt. Kashi Bai's son Rameshwar filed the present suit on 23-2-1948, for a declaration that the aforesaid sale deed would be void and inoperative after the life time of Smt. Kashi Bai, on the allegation that the sale was neither for the benefit of the estate nor for legal necessity.

4. Respondents 1 to 3 contested the suit on various grounds but without success. The trial court held that there was no legal necessity for the sale and that the plaintiff being no party to the alleged family settlement between Smt. Kashi Bai and the three sons of Parmanand, the sale was not, binding on him. On these findings the suit was decreed. The appeal filed by the vendees was also dismissed. Aggrieved, the vendees came up to the High Court in second appeal. In the second appeal it was urged that the Hindu Succession Act 30 of 1956, has in effect abolished reversioners altogether, and as such on the commencement of the said, Act, the instant suit became incompetent and the decree passed therein was liable to be set aside. In support of this contention reliance was placed upon a Division Bench case of our Court, viz., Hanuman Prasad v. Mst. Indrawati, AIR 1958 All 304. The learned Single Judge accepted this plea and setting aside the decree, dismissed the suit. Leave to appeal having been granted by the learned Single Judge, the plaintiff has come up in special appeal.

5. Dr. N. P. Asthana, appearing for the plaintiff, appellant, has urged that the view taken in the case of Hanuman Prasad, AIR 1958 All 304 (supra) no longer holds the field. He has placed reliance on a subsequent decision of our Court reported in Nanhey Lal v. Banwari, 1963 All LJ 723.

6. In the case of Hanuman Prasad, AIR 1958 All 304 a Bench of this Court held:-

'.....reversioners have completely disappeared by virtue of the provisions of Section 15. The customary law of succession has been completely abrogated by the Act which exhaustively amends and codifies the law relating to intestate succession among Hindus. Even the heirs of that husband referred to in Section 15 are the heirs mentioned in Section 8 and not the heirs under the customary law. The next reversioner who was the creation of the customary law, is no longer in the picture.

It makes no difference whatsoever if by accident the heir of the widow is the same person who would have inherited the property on her death as the next reversioner. Since there will be no reversioners after the passing of the Act, nobody can get a decree as a reversioner now. Even these persons who could have obtained a decree before the passing of the Act, that an alienation made before the passing of the Act was invalid cannot now get a declaration to that effect because they have lost the status by virtue of which they could get it.'

For this view the Bench drew support from three cases: one each of Patna, Madhya Pradesh and Orissa High Courts: viz., (1) *Ram Ayodhya Missir v. Raghunath*, (S) AIR 1957 Pat 480, (2) *Dhiraj Kunwar v. Lakshman Singh*, AIR 1957 Madh Pra 38 and (3) *Laxmi Debi v. Surendra Kumar*, (S) AIR 1957 Orissa 1.

7. The view that reversioners have been totally abolished by the Hindu Succession Act does not appear to be sound. Section 15 of the Hindu Succession Act lays down a table of succession in respect of 'the property of a female Hindu dying intestate.' This section would apply to such property alone which a Hindu female held at the time of her death. In property in which a Hindu female has no interest whatsoever at the date of her death, no succession will open and nothing will devolve on her heirs. The Shastric Hindu Law would continue to govern the fate of such property. It is incorrect to say that the Shastric Hindu Law has been repealed or abrogated in its entirety. Section 4 of the Hindu Succession Act says that 'any text, rule or interpretation of Hindu law shall cease to have effect with respect to any matter for which provision is made in this Act.' In respect of matters for which the Act makes no provision, it is apparent, that the rules of Shastric Hindu Law would continue to prevail.

8. In *Kotturuswami v. Veerawa*, AIR 1959 SC 577 the Supreme Court has held that 'the word 'possessed' in Section 14 is used in a broad sense and in the context means the state of owning or having in one's hand or power.'

9. Same view was taken in *Hanuman Prasad's case*, AIR 1958 All 304 and the same view has been expressed practically by all the High Courts in the country. All the High Courts are further agreed that when a Hindu female makes an absolute transfer, i.e., by sale or a gift, and puts the transferee in possession, she is not 'possessed' of any property within the meaning of Section 14 of the Hindu Succession Act. It is, thus, clear that in such property the Hindu female will not retain any interest at the date of her death. Section 15 of the Hindu Succession Act will hence, not govern the succession to such property. There is no other provision of the Hindu Succession Act which may apply in such a situation. Consequently, the rules of Shastric Hindu law will be applicable. The reversioners who are a creation of the Shastric Hindu Law will continue to remain in the picture with reference to such property, and will take the property on death of the female. Their right to challenge the validity of an alienation by a Hindu female, recognised by the Shastric Hindu Law will continue, even after the Hindu Succession Act.

10. In *Hanuman Prasad's case*, AIR 1958 All 304 reliance was placed upon three cases. We find that two of them have been subsequently overruled by larger Benches of those High Courts. The case of (S) AIR 1957 Pat 480 was overruled by a Full Bench of the Patna High Court reported in *Harak Singh v. Kailash Singh*, AIR 1958 Pat 581 (FB). This Full Bench of the Patna High Court has been consistently followed in that High Court, *Ram Gulam v. Palakdhari Singh*, AIR 1961 Pat 60; *Renuka Bala v. Aswini Kumar*, AIR 1961 Pat 498; *Tulsi Ahir v. Mt. Sonia*, AIR 1962 Pat 296; *Sheopujan v. Ramsewak*, AIR 1963 Pat 330; *Gobardhan v. Hariram*, AIR 1963 Pat 335 and *Nathuni Missir v. Mt. Ratna Kuer*, AIR 1963 Pat 337.

11. The case of (S) AIR 1957 Madh-Pra 33, was also overruled by a Full Bench of the Madhya Pradesh High Court reported in *Mt. Lukai v. Niranjana*, AIR 1958 Madh-Pra 160 (FB). This Full Bench has also been followed by that High Court in a subsequent case *Mst. Janku v. Kisan*, AIR 1959 Madh-Pra 1.

12. The third case, viz., (S) AIR 1957 Orissa 1 of the Orissa High Court was not a case in which a reversioner challenged the validity of any transfer made by a Hindu female. The plaintiffs in that case claimed a declaration that they were the reversioners and that the adoption of defendant No. 1 was invalid. The case was, therefore, distinguishable on facts.

13. The Orissa High Court, in *Sansir Patelin v. Satyabati Naikani*, AIR 1958 Orissa 75 has held that the conception of a reversioner still remains in respect of the properties in which the widow does not get the right of a full owner by virtue of Section 14 of the Act and that the reversioner's suit for declaration was maintainable. The same view has been followed by the Orissa High Court in subsequent cases of *Gangadhar Charan v. Saraswati Bewa*, AIR 1962 Orissa 190 and *Ganesh Mahanta v. Sukria Bewa*, AIR 1963 Orissa 167.

14. The view that such a suit is maintainable has been accepted by the High Courts of Calcutta, *Gostha Behari v. Haridas Samanta*, (S) AIR 1957 Cal 557, Madras, *Marudakkal v. Arumugha*, AIR 1958 Mad 255; Bombay, *Bapu Rao Dhondiba v. Neroji Ramji*, AIR 1961 Bom 300; *Ramchandra v. Sukhram*, AIR 1958 Bom 244, Punjab, *Amar Singh v. Sewa Ram* AIR 1960 Punj 530 (FB) Andhra-Pra., *Somiah v. Rattamma*, AIR 1959 Andh-Pra 244, Himachal Pradesh, *Devi Singh v. Mt. Phulma*, AIR 1961 Him-Pra 10; *Smt. Sumitra v. Smt. Maharaju*, AIR 1963 Him-Pra 21 and Kerala, *Thailambal Ammal v. Kesavan Nair*, AIR 1957 Kerala 86.

15. The case of *Hanuman Prasad*, AIR 1958 All 304 has been considered and dissented by the High Courts of Andhra Pradesh, AIR 1959 Andh-Pra 244, Madhya Pradesh, AIR 1959 Madh-Pra 1; Punjab, AIR 1960 Punj 530 (FB), Bombay, AIR 1961 Bom 300 and Himachal Pradesh, AIR 1961 Him-Pra 10.

16. Relying on an unreported Judgment of Supreme Court in *Brahmadeo Singh v. Deomani Missir*, Civil Appeal No. 130 of 1960, D/- 15-10-1962 (SC) a Bench of our Court has, in the case of 1963 All LJ 723 resiled from the view taken in *Hanuman Prasad's* case AIR 1958 All 304. It has held that such a suit is still competent. We have perused the blue print of the Supreme Court decision in *Brahma Deo Singh's* case, Civil Appeal No. 130 of 1960, D/- 15-10-1962 (SC). In that case a suit for declaration was filed by the reversioners challenging the validity of an alienation

made by a limited owner. The suit was decreed by the trial court. On appeal by the vendees the Patna High Court held that on the commencement of the Hindu Succession Act the suit by the reversioners became incompetent. On appeal, the Supreme Court held that the view taken by the Patna High Court was incorrect. Setting aside the decree of the Patna High Court, the Supreme Court remanded the case back to the Patna High Court for rehearing on the merits. From this it is clear that the Supreme Court did in effect hold that the suit was maintainable even after the passing of the Hindu Succession Act.

17. On the state of authorities, the correct view appears to be that such a suit is maintainable even after the commencement of the Hindu Succession Act 1956.

18. The learned Single Judge dismissed the suit on the ground that it was not maintainable. He did not decide the other questions raised in the second appeal.

19. We allow this appeal, set aside the judgment of the learned Single Judge and remand the matter with the direction that the second appeal will be restored to its original number and heard on its merits in accordance with law. The parties will bear their own costs of this special appeal. Costs heretofore shall abide the result.

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